bound if he had accepted the bill after it was drawn.[1] A drawer or maker would be bound in the same way and for the same reasons, but it is well to remark that a bill would seldom be drawn or a note made to a fictitious payee, except by way of accommodation.

4. A bill or note payable to an inanimate object is treated as payable to bearer, for otherwise it would be void, and as the essence of the contract is simply to pay money, the contract will be sustained if possible.[2]

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMINISTRATORS — INDIRECT SALE BY ADMINISTRATOR TO HIMSELF. — A, an administrator with the will annexed, was ordered by the probate court to sell certain land at auction. At the sale, B, a banker, was purchaser for a certain sum, part of which was to be paid down in money, and the remainder in notes secured by a mortgage. No money was actually paid down, because A trusted B to credit him with the requisite sum on his bank account. The court then confirmed the sale, and A forthwith executed a deed to B, leaving it with counsel to be delivered on B's giving the notes and mortgage. This B did. He then conveyed the land to A upon A's oral agreement to discharge him from his liability as purchaser. There was nothing to show that he purchased originally because of any understanding with A. *Held*, that the whole transaction was void, since it came within the general proposition that a trustee cannot become a purchaser at his own sale. The case is an illustration of how far a court will go in the application of this principle. *Caldwell* v. *Caldwell*, 15 N. E. Rep. 297 (Ohio).

AGENCY — KNOWLEDGE OF AGENT IMPUTED TO PRINCIPAL. — A broker employed by plaintiff to reinsure a vessel, having heard that the ship was lost, notified plaintiff that insurance could only be effected at a high figure, which plaintiff declined to pay. The plaintiff then insured through other brokers. The reported loss was not communicated to him, and the policy was renewed in entire good faith. *Held*, that the knowledge of the broker could not be imputed to the plaintiff. *Blackburn, Low, & Co.* v. *Vigors*, 57 L. T. 730.

This case has excited wide comment. The House of Lords affirmed the original decision of Mr. Justice Day, and reversed the decision of Lords Justices Lindley and Lopes in the Court of Appeal; and, it would seem, correctly. The Lords apparently distinguish this case from two other cases of agency: (1) captains or ship agents who have charge of the ship insured; (2) agents through whom the insurance is effected. "The one class is especially employed for the purpose of communicating to [the principal] the very facts which the law requires him to divulge to the insurer; the other is employed, not to procure or give information concerning the ship, but to effect an insurance." For somewhat doubtful reasons the knowledge of the first class is imputed to the principal; that the knowledge of the second should be imputed is clear. But, in this case, there was no legal duty resting on the broker to disclose what he knew, nor did he procure the insurance. His knowledge, therefore, is merely that of a stranger.

ATTORNEY — DISBARMENT — OFFERING MONEY FOR TESTIMONY. — Respondent, an attorney, believing a certain paper to be a forgery, employed an expert to examine it. The expert expressed his doubt as to the forgery; but the respondent, supposing that the expert believed it to be a forgery and only expressed his doubt to extort money for his testimony, offered him a large sum of money to testify that it was a forgery. *Held*, no sufficient ground for disbarment; "such conduct may be

[1] *London & S. W. Bank* v. *Wentworth*, 5 Ex. D. 96.
[2] *Mechanics' Bank* v. *Stratton et al.*, 3 Keyes, 365; Ames' Cases on Bills and Notes, vol. 1, p. 574.

open to criticism, but attorneys should not permit the interests of their clients to suffer by reason of any refined ideas of propriety." *In re Barnes*, 16 Pac. Rep. 896 (Cal.).

BANKS AND BANKING — INSOLVENCY — DRAFTS FOR COLLECTION. — Plaintiff sent to F. bank a draft indorsed "for collection," accompanied with instructions to "collect and credit proceeds." F. bank sent the draft to defendant, and the latter collected it, received the proceeds and credited them to the F. bank. Defendant notified F. bank of the collection, but the latter suspended business before crediting plaintiff with the proceeds. *Held*, that defendant's title depended upon that of the F. bank, and that as the relation of principal and agent, which existed between the F. bank and plaintiff, could only be changed to that of debtor and creditor by a credit of proceeds on books of bank while it was solvent, and as such credit took place after suspension of bank, plaintiff was entitled to recover full amount of draft. *First Nat. Bank of Circleville* v. *Bank of Monroe*, 33 Fed. Rep. 409 (New York); *In re Armstrong*, id. 405 (Ohio). See also *Giles* v. *Perkins*, 9 East, 13.

BILL OF EXCHANGE — ORAL ACCEPTANCE. — The drawee of an order on presentment and demand, after taking time to consider, told the payee, "I think there will be money enough to pay you, and it will be all right, and I will pay it." On another occasion, the payee's agent asked the drawee about the order, and said he "would not pay it that afternoon; but tell Short [the payee] it is all right, and I will pay it;" and the agent so informed the payee. *Held*, that these words, though not in writing, in absence of a statute requiring written acceptances, constituted a valid acceptance. *Short* v. *Blount*, 5 S. E. Rep. 190 (N. C.). For comment and collection of authorities on oral acceptances see Ames' Cas. on Bills and Notes, Vol. II., p. 168, note 2.

CHARITABLE CORPORATIONS — CIVIL LIABILITY. — The plaintiff purchased a grave of the defendant, a cemetery association. His wife died, and when the funeral procession reached the grave, it was found that the defendant had carelessly permitted the burial of two other bodies in the plaintiff's grave. Trespass was brought, and plaintiff recovered damages. The defence was, that the defendant was a charitable association, and as such not subject to civil liability. It was shown that no member received any profit, but that all the funds were used in ornamenting the grounds, burying the poor, giving graves to public institutions, and the like. But the court said that the association was not legally a charitable one, because there was nothing in the charter which compelled the application of any part of its funds to charitable uses. That the funds were, in fact, so applied, ought to be no more a defence, than if defendant were a private individual. *Donnelly* v. *Boston Catholic Cem. Ass'n*, 15 N. E. Rep. 505 (Mass.).

CHECK UPON FUND — EQUITABLE ASSIGNMENT. — A check drawn on a general deposit before bankruptcy does not operate as an equitable assignment *pro tanto*. *Florence Min. Co.* v. *Brown*, 8 Sup. Ct. Rep. 531, 534.

CONTRACT — CONSIDERATION — FORBEARANCE TO SUE. — Defendants agreed to pay the plaintiff $400, in consideration of his forbearing to contest a will which was, in fact, perfectly valid. *Held*, that where a person gives up what he in good faith believes to be a right of action, on the promise of another to pay money for such surrender, the real consideration of the contract consists in the detriment suffered by the person consenting to the surrender, arising from the alteration in his position caused by the promise of the other. *Rue* v. *Miers et al.*, 12 Atl. Rep. 369 (N. J.).

Callisher v. *Bischoffsheim*, L. R. 5 Q. B. 449, is followed as authority. See also *Miles* v. *New Zealand Alford Estate Co.*, 32 Ch. D. 266; *Eckford* v. *Barelli*, 20 W. R. 116; *Grandin* v. *Grandin*, 9 Atl. Rep. 756. To the effect that forbearance to sue is not a good consideration for a promise, unless there is a reasonable doubt as to the validity of the claim, see Langdell, Summary of Contracts (2d ed.), §§ 56, 57, and cases there cited.

CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER. — A local option law forbidding the sale of intoxicating liquors, providing that any county, or any town or city having a population of over 2,500 inhabitants, may by a majority vote come under the operation of the law, is not a delegation of legislative power, but is a law to take effect upon the happening of a future contingency, namely, the vote of the people of the respective localities. Sherwood, J., dissenting. The case contains a full collection and discussion of authorities. *State* v. *Pond*, 6 S. W. Rep. 469 (Mo.).

CONSTRUCTIVE TRUST — LAND OBTAINED BY FRAUD — RESTITUTION. — B sold to M a certain tract of land which was misdescribed in the deed. M, intending to convey the land he had purchased of B, executed a deed to G, who, knowing of the error in original description, had prepared the deed containing a description of a portion of the premises actually conveyed by B to M. G sold to a *bona fide* purchaser. B in the meantime had sold the land described in the deed from B to M to one Mullen, from whom plaintiff traces title. *Held*, that G was a constructive trustee of the property while the title was in his name; that having disposed of the land he was chargeable to plaintiff with its value at the time of the conveyance to the *bona fide* purchaser; and that the amount due from such purchaser should be applied in satisfaction of the same. *Coggswell* v. *Griffith*, 39 N. W. Rep. 538 (Neb.).

There are two theories upon which the plaintiff may recover in such a case as this: —(1) On the theory of constructive trust, where the plaintiff recovers either the land or its proceeds. (2) On the theory that the defendant must make restitution for that which he has taken from the plaintiff; that is, restore the land if he has it, if not, give its equivalent. This case, which was apparently decided upon the latter theory, says that the equivalent is the value of the land at the time it was conveyed to the *bona fide* purchaser. It may be asked, why would it not be complete restitution to give the plaintiff the present value of the land?

COPYRIGHT — ADAPTATION OF SHEET MUSIC TO ORGANETTES. — The manufacture and sale of perforated strips of paper, to be used in organettes for producing a certain tune, is not a violation of the copyrighted sheet music of the same tune. *Kennedy* v. *McTammany*, 33 Fed. Rep. 584 (Mass.).

CRIMINAL LAW — ASSAULT WITH INTENT TO KILL. — A nurse administered to a little child tincture of assafœtida, which she supposed to be poisonous, but was really not so. There was no direct evidence that force was used. *Held*, that she was guilty of an assault with intent to kill, and the jury was authorized to find that force was used from the fact that so small a child had drunk so nauseous a drug. *State* v. *Glover*, 4 S. E. Rep. 564 (S. C.).

EMINENT DOMAIN — ILLEGAL TAKING OF LAND — INTERVENTION OF PUBLIC RIGHTS. — Ejectment was brought against a railroad company which had wrongfully seized land. The owner had apparently acquiesced in the seizure for a long time. The case turned upon another point, but the court said that acquiescence until after public rights had intervened would prevent the owner from recovering the land, although acquiescence would be no bar to an action for compensation. It is no principle of estoppel which prevents recovery of the land, but public policy simply. *Indiana, B., & W. Ry. Co.* v. *Allen*, 15 N. E. Rep. 446 (Ind.).

ESTATES — DEED RESERVING TITLE TILL GRANTOR'S DEATH. — In consideration of personal services, A granted, bargained, sold, aliened, conveyed, and confirmed certain land to B and his heirs, the title to remain in A during his lifetime, and at his death to vest in B. *Held*, that B had an immediate estate in fee, subject to a life estate in A. *White* v. *Hopkins*, 4 S. E. Rep. 863 (Ga.).

EVIDENCE — ACCOUNT-BOOKS. — In an action by the administrator of the payee of a promissory note against the maker, in order to establish certain alleged payments on the note, an account-book kept by the maker himself, and containing entries of the payments in question, was offered in evidence. The maker was alive and present in court. *Held*, inadmissible. The court said: "There is no doubt that shop-books may be introduced as evidence of *sales* made or *work* done, etc., under pressure of certain necessities; but the record of payments on a debt evidenced by a bond or note of the debtor, made by the debtor himself, do not come within the rule." *Wells' Adm'r* v. *Ayres*, 5 S. E. Rep. 21 (Va.).

EVIDENCE — CHARACTER. — In an action against a railroad company for injuries due to the negligence of its employés, it was held that the general reputation of a flagman at a railroad crossing for carelessness is inadmissible in evidence to prove his carelessness on a particular occasion. *Baltimore & O. R. Co.* v. *Colvin*, 12 Atl. Rep. 337 (Pa.).

EVIDENCE — DEPOSITION — CONVICTION AND EXECUTION OF DEPONENT BEFORE SECOND TRIAL. — The deposition of one C, then confined in jail on a charge of murder, was taken and read at the trial of a civil action. On appeal, judgment was reversed and a new trial ordered. Before the second trial, C was convicted of murder and executed. *Held*, that C's deposition was inadmissible as evidence in the second trial. If C had been convicted before the second trial, but not yet executed being

infamous and unable to testify himself, his deposition would have been inadmissible. Nor did his execution give reason for admitting the deposition as proof of the testimony of a deceased witness at a former trial. The testimony of a deceased witness in a former trial is open to every objection which could be made if the witness were alive and personally offered for the first time. *St. Louis, I. N., & L. Ry. Co.* v. *Harper*, 6 S. W. Rep. 720 (Ark.).

EVIDENCE — OPINION. — In an action for negligently causing the death of A, the defendant, in order to show negligence on A's part, asked a witness if he did not have time to jump after he saw the train. *Held*, that, on the assumption that it was an opinion, the evidence was admissible. But the court say, "It would seem to be rather matter of fact, discernible by judgment or estimate." *Quinn* v. *N. Y., N. H., & H. R.R. Co.*, 12 Atl. Rep. 97 (Conn.).

In an action against a railroad company for personal injury caused by defendant's steam-shovel, the evidence was offered of the operator of the shovel, not shown to be an expert, that, after the shovel had started, "no human force could have prevented the lever, or bucket, from swinging around to its accustomed place." *Held*, admissible. Such evidence is not mere opinion, but is a summary of a number of involved facts; it is the statement of "the result of personal observation and knowledge as to a collective fact." *Alabama G. S. R.R. Co.* v. *Yarbrough*, 3 So. Rep. 447 (Ala.).

These two cases may be profitably compared with the cases of *Com.* v. *Sturtevant*, 117 Mass. 122, in which a witness, having examined with a lens a fresh blood-stain on a coat, and the stain having been since partly rubbed off, was allowed to testify that its appearance then indicated that it had fallen upon the coat from a certain direction, although the witness had never experimented with blood or any other fluid in this respect. It is said that such evidence of a common observer, testifying to the result of his observation made at the time, is not a mere opinion, but is "a conclusion of fact to which his judgment, observation, and common knowledge have led him;" its admissibility is subject to two conditions: first, that the subject-matter of the testimony is a state of things which cannot be properly reproduced or described to the jury; second, that it is a state of things which a common observer is capable of comprehending.

EVIDENCE — PERJURY — FALSE STATEMENTS AS TO DETAILS. — In a trial for perjury, in order to show the falsity of the defendant's statement assigned for perjury, evidence is admissible of the falsity of the defendant's statements as to the details of the principal statement, although such details are not assigned for perjury, and their falsity is not direct evidence of the falsity of the principal statement. *Anderson* v. *State*, 7 S. W. Rep. 44 (Tex.). *State* v. *Buie*, 43 Tex. 532, is overruled.

EQUITY JURISDICTION — CONTINUING TRESPASS. — The defendant obtained permission of plaintiff to put a few stones upon his land. In plaintiff's absence he piled boulders, fourteen feet high, upon the land, and the plaintiff asks a mandatory injunction to compel their removal.

Held, that it was a continuing trespass, and, while equity will ordinarily require the right to be tried at law first, that rule is rather one of discretion than jurisdiction, and relief will be granted. *Wheelock* v. *Noonan*, 15 N. E. Rep. 67 (N. Y.).

FEDERAL JURISDICTION — VENUE. — For construction and interpretation of Act of Congress of March 3, 1887, which provides that a suit between citizens of different States shall be brought only in the district where either the plaintiff or defendant resides, see *St. Louis, V., & I. H. R. Co.* v. *Terre Haute & I. R. Co.*, 33 Fed. Rep. 385 (Ill.); *Pitkin County Min. Co.* v. *Markell*, id. 386 (Col.); *Harold* v. *Iron Silver Min. Co.*, id. 529 (Col.); *Carpenter* v. *Talbot*, id. 537 (Vt.).

GENERAL ASSUMPSIT — PROMISSORY NOTE AS EVIDENCE OF DEBT. — A promissory note varying from the one specially pleaded is admissible under the common counts as evidence of money had and received, in connection with evidence that the defendant admitted his indebtedness on the note. *Hopkins* v. *Orr*, 8 Sup. Ct. Rep. 590. This case assumes that a note does not extinguish the debt, or even suspend the remedy.

HIGHWAY — DEDICATION. — Where one, in making a deed of a piece of his land, refers as a boundary to a street laid out, but not opened, he does not thereby dedicate so much of his lands as lies within the street limits to the public. *In re Brooklyn Street*, 12 Atl. Rep. 664 (Pa.).

INSOLVENCY — PREFERRED CREDITOR — MISAPPROPRIATED FUNDS. — Plaintiff deposited certain bonds for safe-keeping with a banker, who wrongfully deposited them

as collateral security for the payment of a note of which he was maker. The bonds were applied in part payment of the note, and the banker shortly afterwards became insolvent. *Held*, that the proceeds of the bond went to increase the assets of the bank, and that plaintiff's claim should be preferred to those of general creditors. *Bowers* v. *Evans*, 36 N. W. Rep. 629 (Wis.).

It is questionable whether, in the above case, the facts warrant the conclusion that the proceeds of the bonds "went to increase the assets of the bank which were assigned." Wherever it is clear, however, that the fund of the assignee is greater than it would have been if there had been no misappropriation, the defrauded person is to be preferred to the amount of such excess. For collection of authorities see 1 Harv. L. Rev. 104, note.

MASTER AND SERVANT — SUPERVISING ARCHITECT — LIABILITY FOR NEGLIGENCE. — When, in the erection of a building on the defendant's premises, the work is done under the direction of a supervising architect having discretion as to the mode of doing the work, but subject to the control of the defendant, who has the ultimate power of ordering how the work shall be done, *semble*, that the defendant is liable for personal injuries to a workman, caused by negligent performance of the work. The architect in such a case is not an independent contractor. *Campbell* v. *Lunsford*, 3 So. Rep. 522 (Ala.).

A note cites cases on the question as to when the terms of a written contract for work are sufficient to prevent the contractor from being independent, so that the rule *respondeat superior* will apply.

MISTAKE OF LAW — VOLUNTARY PAYMENT OF JUDGMENT DEBT. — Plaintiff, to avoid an execution sale, made a voluntary payment of a judgment debt. In the mean time an appeal had been entered which resulted in a reversal of the judgment. *Held*, that the payment being voluntary, plaintiff was not entitled to restitution. *Gould et ux.* v. *McFall*, 12 Atl. Rep. 346 (Pa.).

In support of the proposition that money voluntarily paid with a full knowledge of all the facts cannot be recovered back because the party was ignorant of, or mistook, the law as to his liability, see *County of Jefferson* v. *Hawkins*, 2 South. Rep. 362 (Fla.); *Baldwin* v. *Foss*, 32 N. W. Rep. 389 (Iowa); *Shipman* v. *Dist. of Columbia*, 7 Sup. Ct. Rep. 134; *Gillian* v. *Alford*, 6 S. W. Rep. 757 (Tex.).

PERPETUITIES — STATUTORY RULE AGAINST. — Under a statute which provides that every future estate shall be void in its creation which shall suspend the absolute power of alienation for more than two lives in being, *held*, that a clause in a will which conflicted with such statute, thus making invalid certain trusts created by the will, should be treated as a nullity. *Palms* v. *Palms*, 36 N. W. Rep. 419 (Mich.).

As the property was devised to trustees with a power of sale, the case is valuable as showing that the conception of the common-law rule against perpetuities, that if the future estate *may not vest* within the required limits it is void, is applied to a statutory rule which simply prohibits the suspension of the power of alienation. A statute similar to the above exists in California, Indiana, Minnesota, New York, and Wisconsin.

STATUTE OF ANOTHER STATE — HOW FAR ENFORCEABLE. — Plaintiff's intestate was killed by defendant railroad company in Michigan, where, by statute, a right of action accrued to the personal representatives of deceased. Action was brought in Indiana, where a similar statute was in force. *Held*, that a right of action arising under a statute of another State will be enforced as readily as if it arose under the common law, provided that the statute in question is not against the express provisions or the policy of the law of the State where action is brought. Cases for and against this proposition are collected. *Burns* v. *Grand Rapids & I. R. Co.*, 15 N. E. Rep. 230 (Ind.).

TRUSTS — RESULTING. — A conveyed land to B upon which C had a mortgage. D paid off the mortgage and directed C to convey his interest to B. *Held*, that there was no resulting trust in favor of D, because a trust will result only when consideration is furnished for a conveyance of the land itself, not when money is advanced merely to discharge an incumbrance. The court makes some interesting observations in regard to resulting trusts. "The doctrine of resulting trusts is a very difficult one; indeed, it should be swept away by legislation, and should have no resting-place in this State. It served its purpose long ago. When a man makes a deed to another, no trust being reserved in the deed, but the whole title being conveyed, with warranty, etc., no trust should result." *Boyer* v. *Floury*, 5 S. E. Rep. 63 (Ga.).